

ASSEMBLY BILL

No. 585

Introduced by Assembly Member Negrete McLeod

February 16, 2005

An act to amend Sections 22900, 22901, 22902, 22903, 22904, 22905, 22906, 22907, 22922, 22924, and 22925 of, and to amend the heading of Chapter 28 (commencing with Section 22900) of Division 8 of, the Business and Professions Code, relating to dealers.

LEGISLATIVE COUNSEL'S DIGEST

AB 585, as introduced, Negrete McLeod. Dealers.

Existing law provides for the regulation of equipment dealers and defines equipment for those purposes as machines designed for agriculture, livestock, grazing, light industrial, and utility purposes. Under existing law, this definition excludes all-terrain vehicles, earth moving and heavy construction equipment, and mining and forestry equipment. Existing law authorizes an equipment dealer to establish a lien for unpaid charges and requires the dealer to file the lien with the Secretary of State.

This bill would expand the definition of equipment to include all-terrain vehicles and other machinery, equipment, implements, or attachments used for specified purposes and would designate a person or entity primarily engaged in the retail sale of equipment as a dealer or dealership.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 28 (commencing with Section 22900) of Division 8 of the Business and Professions Code is amended to read:

CHAPTER 28. ~~EQUIPMENT~~ DEALERS

SEC. 2. Section 22900 of the Business and Professions Code is amended to read:

22900. The Legislature finds and declares that the retail distribution ~~and~~, sales, *and rental* of agricultural, *construction*, utility, ~~and~~ industrial, *mining, outdoor power, forestry, and lawn and garden* equipment, utilizing independent ~~retail~~ dealers operating under ~~agreements~~ *contract* with the ~~manufacturers and distributors~~ *supplier* vitally affects the general economy of the state, ~~the public interests~~ *interest*, and ~~the public welfare and~~. *Therefore, the Legislature has determined that it is necessary to regulate the business relations between the independent dealers and the equipment manufacturers, wholesalers, and distributors suppliers as described in this chapter and that a violation of this chapter contravenes an important public policy of this state.*

SEC. 3. Section 22901 of the Business and Professions Code is amended to read:

22901. ~~As used in~~ *The following definitions apply for purposes of this chapter:*

(a) (1) "Equipment" means ~~machines designed for or adapted and used for agriculture, livestock, grazing, light industrial, and utility, as those terms are customarily used in the industry. It does not include earthmoving and heavy construction equipment, mining equipment, or forestry equipment as those terms are customarily used in the industry, nor does it include all-terrain vehicles as defined in Section 111 of the Vehicle Code all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with, any of the following purposes:~~

(A) *Lawn, garden, golf course, landscaping, or grounds maintenance.*

(B) *Planting, cultivating, irrigating, harvesting, and producing agricultural or forestry products.*

1 (C) Raising, feeding, tending to, or harvesting products from,
2 livestock and any other activity in connection with those
3 activities.

4 (D) Industrial, construction, maintenance, mining, or utility
5 activities or applications, including, but not limited to, material
6 handling equipment.

7 (2) Self-propelled vehicles designed primarily for the
8 transportation of persons or property on a street or highway are
9 specifically excluded from the definition of equipment.

10 (b) ~~“Equipment dealer” or “equipment dealership”~~ “Dealer or
11 dealership” means any person, partnership, corporation,
12 association, or other form of business enterprise, primarily
13 engaged in the retail sale of equipment as defined in subdivision
14 (a).

15 (c) “Supplier” means a person, partnership, corporation,
16 association, or other business enterprise engaged in the
17 manufacturing, assembly, or wholesale distribution of equipment.
18 The term shall also include any successor in interest, including a
19 purchaser of assets or stock, or a surviving corporation resulting
20 from a merger, liquidation, or reorganization of the original
21 supplier.

22 (d) “Dealer agreement” means an oral or written contract or
23 agreement of definite or indefinite duration, between a supplier
24 and ~~an equipment~~ a dealer, which provides for the rights and
25 obligations of the parties with respect to the purchase or sale of
26 equipment.

27 (e) “Net cost” means the price the ~~equipment~~ dealer paid to the
28 supplier for the equipment, less all applicable discounts allowed,
29 plus the freight costs from the supplier’s location to the
30 ~~equipment~~ dealer’s location.

31 (f) “Net price” means the price listed for repair parts in the
32 supplier’s price list or catalog, less all applicable discounts.

33 SEC. 4. Section 22902 of the Business and Professions Code
34 is amended to read:

35 22902. (a) It shall be a violation of this chapter for a supplier
36 to take any of the following actions:

37 ~~(a)–~~

38 (1) Except as required by any applicable law or unless special
39 features or accessories are safety features or accessories required
40 by a supplier, to coerce or compel any ~~equipment~~ dealer to order

1 or accept delivery of any equipment or parts or any equipment
2 with special features or accessories not included in the base list
3 price of the equipment as publicly advertised by the supplier,
4 which the ~~equipment~~ dealer has not voluntarily ordered.

5 ~~(b)–~~

6 (2) To coerce or compel any ~~equipment~~ dealer to enter into
7 any agreement, whether written or oral, supplementary to an
8 existing dealer agreement with the supplier, unless that
9 supplementary or amendatory agreement is imposed on all other
10 similarly situated dealers in the state.

11 ~~(c)–~~

12 (3) To refuse to deliver to any ~~equipment~~ dealer in reasonable
13 quantities and within a reasonable time after receipt of the
14 ~~equipment~~ dealer's order, equipment covered by the dealer
15 agreement specifically represented by the supplier to be available
16 for immediate delivery. The failure to deliver ~~any such the~~
17 equipment shall not be considered a violation of this chapter if
18 the failure is due to restrictions on extension of credit by the
19 supplier to the ~~equipment~~ dealer, any breach of or default under
20 the agreement by the ~~equipment~~ dealer, an act of God, work
21 stoppage or delay due to a strike or labor difficulty, a bona fide
22 shortage of materials, freight embargo, or other cause over which
23 the supplier has no control.

24 ~~(d)–~~

25 (4) To terminate, cancel, or fail to renew a dealer agreement or
26 substantially change the competitive circumstances of the dealer
27 agreement without cause.

28 ~~(e)–~~

29 (5) To require as a condition of renewal or extension of a
30 dealership agreement that the dealer complete substantial
31 renovation of the dealer's place of business; or acquire new or
32 additional space to serve as the dealer's place of business, unless
33 the supplier provides at least one year's written notice of the
34 condition ~~which~~ that states all grounds supporting the condition.
35 The supplier shall provide a reasonable time for the dealer to
36 complete the renovation or acquisition after the one year's notice
37 period has expired.

38 ~~(f)–~~

39 (6) To discriminate in the prices charged for equipment of like
40 grade and quality sold by the supplier to similarly situated

dealers in this state. This ~~subdivision~~ *paragraph* does not prevent the use of differentials resulting from the differing quantities in which equipment is sold or delivered and does not prevent a supplier from offering a lower price in order to meet an equally low price of a competitor or the services or facilities furnished by a competitor. The provisions of this ~~subdivision~~ *paragraph* shall not apply to sales to ~~an equipment~~ a dealer for resale to any unit or agency of the United States government, the state, or any of its political subdivisions, or any municipality located within this state or to any major fleet account or to any organization for testing or demonstration.

~~(g)~~

(7) To prevent, by contract or otherwise, any ~~equipment~~ dealer from changing the capital structure of the ~~equipment~~ dealership or the means by which the ~~equipment~~ dealership is financed, provided the ~~equipment~~ dealer at all times meets any reasonable capital standards imposed by the supplier or as otherwise agreed to between the ~~equipment~~ dealer and the supplier, and provided this change by the ~~equipment~~ dealer does not result in a change of the controlling interest in the executive management or board of directors, or any guarantors of the ~~equipment~~ dealership.

~~(h)~~

(8) To prevent, by contract or otherwise, any ~~equipment~~ dealer or any officer, member, partner, or stockholder of any ~~equipment~~ dealer from selling or transferring any part of the interest of any of them to any other party or parties. However, no ~~equipment~~ dealer, officer, partner, member, or stockholder shall have the right to sell, transfer, or assign the ~~equipment~~ dealership or power of management or control of the dealership without the written consent of the supplier. ~~Should~~ If a supplier ~~determine~~ *determines* that the designated transferee is not acceptable, the supplier shall provide the ~~equipment~~ dealer with written notice of the supplier's objection and specific reasons for withholding its consent.

~~(i)~~

(9) To require ~~an equipment~~ a dealer to assent to a release, assignment, novation, waiver, or estoppel ~~which that~~ would relieve any person from liability imposed by this section.

~~(j) (1)~~

1 (10) (A) To unreasonably withhold consent; in the event of the
2 death of the ~~equipment~~ dealer or the principal owner of the
3 ~~equipment~~ dealership, to the transfer of the ~~equipment~~ dealer's
4 interest in the ~~equipment~~ dealership to a member or members of
5 the family of the ~~equipment~~ dealer or the principal owner of the
6 ~~equipment~~ dealership, if the family member meets the reasonable
7 financial, business abilities and experience, and character
8 standards of the supplier. ~~Should~~ If a supplier ~~determine~~
9 *determines* that the designated family member is not acceptable,
10 the supplier shall provide the ~~equipment~~ dealer with written
11 notice of the supplier's objection and specific reasons for
12 withholding its consent. A supplier shall have 90 days to consider
13 ~~an equipment~~ a dealer's request to make a transfer to a family
14 member. As used in this ~~paragraph~~ *subparagraph*, a "family
15 member" means and includes a spouse, parent, sibling, child,
16 stepchild, son-in-law, daughter-in-law, and lineal descendant,
17 including those by adoption of the ~~equipment~~ dealer or principal
18 owner of the ~~equipment~~ dealership.

19 ~~(2)~~

20 (B) Notwithstanding ~~paragraph (1) of this subdivision, in the~~
21 ~~event that subparagraph (A), if~~ a supplier and ~~equipment~~ dealer
22 have duly executed an agreement concerning succession rights
23 prior to the ~~equipment~~ dealer's death, and if the agreement has
24 not been revoked or otherwise terminated by either party, the
25 agreement shall be observed.

26 ~~(k)~~

27 (b) Notwithstanding the provisions of ~~subdivisions (h) and (j)~~
28 *paragraphs (8) and (10) of subdivision (a)* and without
29 precluding any other permissible bases for withholding consent,
30 a supplier may withhold consent to a transfer of interest in an
31 ~~equipment~~ dealership if, with due regard to regional market
32 conditions and distribution economies, the dealer's area of
33 responsibility or trade area does not afford sufficient sales
34 potential to reasonably support a dealer. In any dispute between a
35 supplier and ~~equipment~~ dealer under this subdivision, the
36 supplier shall bear the burden of proving that the dealer's area of
37 responsibility or trade area does not afford sufficient sales
38 potential to reasonably support a dealer. The proof offered shall
39 be in writing.

SEC. 5. Section 22903 of the Business and Professions Code is amended to read:

22903. (a) Except where grounds for termination or nonrenewal of a dealer agreement or a change in the competitive circumstances of a dealer agreement are contained in paragraph (1), (2), (3), (4), (5), (6), or (7) of subdivision (b), a supplier shall ~~give an equipment~~ a dealer 90 days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or change the competitive circumstances of a dealer agreement. The notice shall state the reasons constituting cause for termination, cancellation, or nonrenewal and shall provide that the ~~equipment~~ dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days to the satisfaction of the supplier, the notice shall be void. The contractual term of the dealer agreement shall not expire or the competitive circumstances of the dealer agreement shall not be changed by the supplier, without the written consent of the ~~equipment~~ dealer, prior to the expiration of at least 90 days following this notice.

(b) No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without cause. "Cause" means failure by ~~an equipment~~ a dealer to comply with the requirements imposed upon the ~~equipment~~ dealer by the dealer agreement, provided the requirements are not different from those requirements imposed on other similarly situated ~~equipment~~ dealers in this state. In addition, cause exists whenever the ~~equipment~~ dealer has *taken any of the following actions*:

(1) Transferred a controlling ownership interest in the ~~equipment~~ dealership without the consent of the supplier, who shall not withhold consent unreasonably.

(2) Made a material misrepresentation or falsification of any record.

(3) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the ~~equipment~~ dealer ~~which~~ *that* has not been discharged within 60 days after the filing; or is insolvent or in receivership.

(4) Pleaded guilty to or has been convicted of a felony *involving an act of moral turpitude*.

1 (5) Failed to operate in the normal course of business for
2 seven consecutive business days or has terminated the business.

3 (6) Relocated or established a new or additional ~~equipment~~
4 dealer's place of business without the supplier's consent.

5 (7) Failed to satisfy any payment obligation as ~~they come~~ *it*
6 *became* due and payable to the supplier, failed to promptly
7 account to the supplier for any proceeds of the sale of equipment,
8 or failed to hold such proceeds in trust for the benefit of the
9 supplier.

10 (8) Consistently engaged in business practices ~~which~~ *that* are
11 detrimental to the consumer or supplier, including but not limited
12 to, excessive pricing, misleading advertising, failure to provide
13 service and replacement parts, or perform warranty obligations.

14 (9) After receiving notice from the supplier of its requirements
15 for reasonable market penetration based on the supplier's
16 experience in other comparable marketing areas, consistently
17 failed to meet the supplier's market penetration requirements,
18 based upon available record information.

19 (10) Consistently failed to meet building and housekeeping
20 requirements, or failed to provide adequate sales, service, or parts
21 personnel commensurate with the dealer agreement.

22 (11) Consistently failed to comply with the applicable
23 licensing laws pertaining to the products and services being
24 represented for and on the supplier's behalf.

25 SEC. 6. Section 22904 of the Business and Professions Code
26 is amended to read:

27 22904. Every supplier shall provide to its ~~equipment~~
28 on an annual basis, an opportunity to return a portion of their
29 surplus parts inventory for credit. The surplus procedure shall be
30 administered as follows:

31 (a) The supplier may notify its ~~equipment~~
32 period, of at least 90 days' duration, during which time
33 ~~equipment~~ dealers may submit their surplus parts list and return
34 their surplus parts to the supplier. The designated period to return
35 parts may be staggered during the year for each ~~equipment~~ dealer
36 at the supplier's option.

37 (b) If a supplier has not notified ~~an equipment~~ *a* dealer of a
38 specific time period for returning surplus parts within the
39 preceding 12 months, then it shall authorize and allow the

1 ~~equipment~~ dealer's surplus parts return request within 60 days
2 after receipt of ~~such that~~ request from the ~~equipment~~ dealer.

3 (c) Pursuant to the provisions of this section, a supplier ~~must~~
4 *shall* allow surplus parts return authority on a dollar value of
5 parts equal to 10 percent of the total dollar value of parts
6 purchased by the ~~equipment~~ dealer from the supplier during the
7 12-month period immediately preceding the notification to the
8 ~~equipment~~ dealer by the supplier of the surplus parts return
9 program, or the month the ~~equipment~~ dealer's return request is
10 made, whichever is applicable. The ~~equipment~~ dealer may elect
11 to return a dollar value of the ~~equipment~~ dealer's surplus parts
12 equal to less than 10 percent of the total dollar value of parts
13 purchased by the ~~equipment~~ dealer from the supplier during the
14 preceding 12-month period, as provided in this section.

15 (d) No obsolete or superseded part may be returned, but any
16 part listed in the supplier's current returnable parts list or any
17 superseded part that has not been the subject of the supplier's
18 parts return program at the date of notification to the ~~equipment~~
19 dealer by the supplier of the surplus parts return program, or the
20 date of the ~~equipment~~ dealer's parts return request, whichever is
21 applicable, shall be eligible for return and the credit specified.
22 However, returned parts shall be in new and unused condition
23 and shall have been purchased by the ~~equipment~~ dealer from the
24 supplier to whom they are returned, unless no program for the
25 return of ~~such that~~ part has been offered by the supplier.

26 (e) The minimum lawful credit to be allowed for returned parts
27 shall be 95 percent of the net price, as listed in the supplier's
28 current returnable parts list at the date of the notification to the
29 ~~equipment~~ dealer by the supplier of the surplus parts return
30 program, or the date of the ~~equipment~~ dealer's parts return
31 request, whichever is applicable.

32 (f) Applicable credit, pursuant to this section, ~~must~~ *shall* be
33 issued or furnished to the ~~equipment~~ dealer within 90 days after
34 receipt of the ~~equipment~~ dealer's returned parts by the supplier.

35 (g) The provisions of this section shall be supplemental to any
36 agreement between the ~~equipment~~ dealer and the supplier
37 covering the return of repair parts. This section does not prevent
38 a supplier from charging back to the dealer's account amounts
39 previously paid or credited as a discount incident to the dealer's

1 purchase of goods. Any repurchase, pursuant to this section, shall
2 not be subject to the provisions of the bulk sales law.

3 (h) The annual parts return provided for in this section may be
4 waived by a dealer.

5 SEC. 7. Section 22905 of the Business and Professions Code
6 is amended to read:

7 22905. (a) Whenever a dealer agreement is terminated by
8 cancellation or nonrenewal, the supplier shall repurchase the
9 inventory as provided in this section. In addition, the supplier
10 shall repurchase at its fair market value or assume the lease
11 responsibilities of any specific data processing hardware that the
12 supplier required the ~~equipment~~ dealer to purchase to satisfy the
13 minimum requirements of the dealer agreement, including
14 computer systems equipment required and approved by the
15 supplier to communicate with the supplier, and repurchase at 75
16 percent of the net cost specialized repair tools previously
17 purchased, pursuant to requirements of the supplier and held by
18 the ~~equipment~~ dealer on the date of termination. These
19 specialized repair tools ~~must~~ *shall* be unique to the supplier
20 product line and must be complete and in usable condition.

21 (b) The supplier shall pay 100 percent of the net cost of all
22 new, unsold, undamaged, and complete equipment ~~which~~ *that* is
23 resalable, less a reasonable allowance for depreciation due to
24 usage by the ~~equipment~~ dealer and deterioration attributable to
25 weather conditions at the ~~equipment~~ dealer's location, less all
26 programs and discounts previously allowed and 95 percent of the
27 current net price of all new, unused, and undamaged repair parts
28 and accessories ~~which~~ *that* are listed in the supplier's effective
29 price list or catalog, less all programs and discounts previously
30 allowed by the supplier to the ~~equipment~~ dealer. The supplier
31 shall also pay the ~~equipment~~ dealer 5 percent of the current net
32 price on all new, unused, and undamaged repair parts returned, to
33 cover the cost of handling, packing, and loading. The supplier
34 shall have the option of performing the handling, packing, and
35 loading of parts in lieu of paying the 5 percent charge imposed
36 for these services and in this case, the ~~equipment~~ dealer shall
37 make available to the supplier, at the ~~equipment~~ dealer's address
38 or at the places at which it is located, all equipment previously
39 purchased by the ~~equipment~~ dealer.

1 (c) The provisions of this section shall not require the
2 repurchase from the ~~equipment~~ dealer of:

3 (1) Any repair part ~~which~~ *that* has a limited storage life or is
4 otherwise subject to deterioration.

5 (2) Any single repair part ~~which~~ *that* is priced as a set of two
6 or more items.

7 (3) Any repair part, which because of its condition, is not
8 resalable as a new part without repairing or reconditioning.

9 (4) Any inventory for which the ~~equipment~~ dealer is unable to
10 furnish evidence satisfactory to the supplier, of good title, free
11 and clear of all claims, liens, and encumbrances.

12 (5) Any inventory ~~which~~ *that* the ~~equipment~~ dealer desires to
13 keep, including lease or rental equipment outstanding, provided
14 the ~~equipment~~ dealer has a contractual right to do so.

15 (6) Any equipment ~~which~~ *that* is not in new, unused,
16 undamaged, and complete condition.

17 (7) Any equipment ~~which~~ *that* has been used by the ~~equipment~~
18 dealer or has deteriorated because of weather conditions at the
19 ~~equipment~~ dealer's location unless the supplier receives an
20 allowance for ~~such~~ *the* usage or deterioration, except
21 demonstrated equipment under 50 hours usage, that is equipped
22 with an hour meter and has not been previously sold, shall be
23 considered as new equipment.

24 (8) Any repair parts ~~which~~ *that* are not in new, unused, and
25 undamaged condition.

26 (9) Any inventory ~~which~~ *that* was ordered by the ~~equipment~~
27 dealer on or after the date of receipt of the notification of
28 termination of the dealer agreement.

29 (10) Any inventory ~~which~~ *that* was acquired by the ~~equipment~~
30 dealer from any source other than the supplier, other than a
31 successor in interest provided in Section 22924.

32 (d) If any supplier shall fail or refuse to repurchase any
33 inventory covered under the provisions of this section within 90
34 days after termination of a dealer agreement, the supplier shall be
35 liable for the total amount of 110 percent of the current net price
36 of the inventory, plus any freight charges paid by the ~~equipment~~
37 dealer, interest at the statutory rate from the date of shipment to
38 the supplier, and 5 percent for handling, packing, and loading.

39 SEC. 8. Section 22906 of the Business and Professions Code
40 is amended to read:

1 22906. (a) ~~An equipment~~ A dealer, as defined in subdivision
2 (b) of Section 22901, is not entitled to establish a lien pursuant to
3 this chapter, unless that person has first sent to the lien debtor a
4 written notice, by certified mail, which states all of the following:

5 (1) The payment of the reasonable or agreed charges is more
6 than 90 days overdue. This requirement does not apply to
7 equipment subject to repurchase that was returned to the supplier
8 subsequent to return of other equipment also subject to
9 repurchase for which payment is overdue.

10 (2) The amount of reasonable or agreed charges that are
11 overdue.

12 (3) The lien debtor has the following three alternatives:

13 (A) Allow the lien to be filed.

14 (B) Enter into a consensual security interest in the proceeds,
15 pursuant to the Commercial Code.

16 (C) Pay the reasonable or agreed charges that are overdue.

17 (4) The lien debtor has 10 days from receipt of the notice to
18 select an alternative, notify the lien claimant of the alternative
19 selected, and satisfy all of the requirements of the selected
20 alternative. This part of the notice to the lien debtor shall be in
21 10-point type or bolder.

22 (5) The lien claimant may file the notice of claim of lien
23 pursuant to this chapter at any time thereafter if the lien debtor
24 does not comply with the requirements of this section.

25 (b) ~~An equipment~~ A dealer who has complied with subdivision
26 (a), has a lien for payment of the repurchase amount payable
27 under subdivision (b) of Section 22905 and for the costs of
28 enforcing the lien.

29 (c) The lien established pursuant to this chapter attaches to the
30 proceeds of any sale of the equipment returned for repurchase.

31 (d) The amount of charges secured by the lien shall not exceed
32 an amount equal to the reasonable or agreed charges for the
33 equipment as set forth in Section 22905.

34 SEC. 9. Section 22907 of the Business and Professions Code
35 is amended to read:

36 22907. Except as otherwise provided in this chapter, the
37 notice of lien shall remain in effect, and no new notice of claim
38 of lien shall be required in order to maintain the lien, as long as
39 the ~~equipment~~ dealer remains unpaid for the amounts secured by
40 the lien.

1 SEC. 10. Section 22922 of the Business and Professions Code
2 is amended to read:

3 22922. (a) Except to the extent specifically set forth in this
4 chapter, the lien created by this chapter is subject to Division 9
5 (commencing with Section 9101) of the Commercial Code.

6 (b) For the purposes of this chapter, as used in Division 9
7 (commencing with Section 9101) of the Commercial Code, the
8 following terms have the following meanings:

9 (1) "Secured party" refers to the ~~equipment~~ dealer, lien
10 creditor, lien claimant, or assignee thereof under this chapter.

11 (2) "Debtor" refers to the supplier, lien debtor, or debtor under
12 this chapter.

13 (3) "Collateral" refers to the equipment subject to the lien
14 created under this chapter.

15 (c) A security agreement is not necessary to make an
16 equipment repurchase lien created under this chapter enforceable.

17 (d) An equipment repurchase lien created under this chapter
18 shall not continue in the repurchased equipment following the
19 disposition thereof.

20 (e) The right of ~~an equipment~~ a dealer to enforce the lien
21 created under this chapter shall be governed by this chapter and
22 shall not be governed by Chapter 6 (commencing with Section
23 9601) of Division 9 of the Commercial Code.

24 SEC. 11. Section 22924 of the Business and Professions Code
25 is amended to read:

26 22924. (a) In the event of the death or incapacity of the
27 ~~equipment~~ dealer, which in this context shall mean an owner,
28 equal or majority partner, or the majority stockholder of a
29 corporation, operating as ~~an equipment~~ a dealer, the supplier
30 shall, at the option of the heirs at law, if the ~~equipment~~ dealer
31 died intestate, or the executor under the terms of the deceased
32 ~~equipment~~ dealer's last will and testament, if the ~~equipment~~
33 dealer died testate, repurchase the inventory from the estate as if
34 the supplier had terminated the dealer agreement and the
35 inventory repurchase provisions of Section 22905 are applicable.
36 The heirs or executor shall have six months from the date of the
37 death of the ~~equipment~~ dealer or majority stockholder to exercise
38 the option under this section. However, nothing in this section
39 shall require the repurchase of inventory, if the heirs or executor
40 and the supplier enter into a new dealer agreement, or if a

1 successor to the ~~equipment~~ dealer is established pursuant to
2 ~~paragraph 2 subparagraph (B) of paragraph (10)~~ of subdivision
3 ~~(j)~~ (a) of Section 22902. This section shall be subject to that
4 portion of the supplier's agreement with the ~~equipment~~ dealer
5 pertaining to death of the ~~equipment~~ dealer or succession, to the
6 extent the agreement is not inconsistent. Nothing in this section
7 shall entitle an heir or personal representative of a deceased
8 dealer or majority stockholder to operate the dealership beyond
9 the six months provided for in this subdivision without the
10 consent of the supplier.

11 (b) The provisions of this section shall be supplemental to any
12 agreement between the ~~equipment~~ dealer and the supplier
13 covering the return of equipment, attachments, and repair parts.
14 Notwithstanding anything contained in this section, the rights of
15 a supplier to charge back to the ~~equipment~~ dealer's account
16 amounts previously paid or credited as a discount incident to the
17 ~~equipment~~ dealer's purchase of inventory shall not be affected.
18 Further, any repurchase shall not be subject to the provisions of
19 the bulk sales law.

20 SEC. 12. Section 22925 of the Business and Professions Code
21 is amended to read:

22 22925. Any ~~equipment~~ dealer may bring an action against a
23 supplier in any court of competent jurisdiction for damages
24 sustained by the ~~equipment~~ dealer as a consequence of the
25 supplier's violation of any provisions of this chapter, together
26 with costs and reasonable attorney's fees. The ~~equipment~~ dealer
27 may also be granted injunctive relief against unlawful
28 termination, cancellation, nonrenewal, and change in competitive
29 circumstances. The remedies set forth in this action shall not be
30 deemed exclusive and shall be in addition to any other remedies
31 permitted by law. This section is not intended to affect current
32 law pertaining to product liability actions.